COURT NO.3

Criminal Miscellaneous Application no.376 of 2002

Ajay Kumar Jain …… Applicant

Versus

Additional Sessions Judge/Special Judge (CBI/Anti-Corruption) Uttaranchal, Dehradun …. Respondent

Hon'ble Irshad Hussain, J.

Heard Sri Sandeep Tandon, learned counsel for the applicant and Sri U.K.Uniyal, learned counsel for the C.B.I.

Criminal miscellaneous application under section 482 Cr.P.C. was moved with a prayer to direct the Additional Sessions Judge (CBI/Anti-corruption), Dehradun, Uttaranchal, not to proceed with CBI case no.7 of 1992 CBI Versus K.C.Mathur and others as the said court has ceased to have jurisdiction in the subject matter of the case after issuance of notification conferring jurisdiction of 18 districts of western Uttar Pradesh including district Saharanpur to Special Judge, CBI Ghaziabad. A notification was issued by the U.P. Government on 26.12.2001 in regard to the 18 districts and in pursuance thereof, the Allahabad High Court was pleased to issue notification dated 28.1.2002 in regard to the appointment of Special Judge, CBI Ghaziabad for the offence committed in the geographical areas mentioned in the said notification.

Copy of the chargesheet filed by the CBI against the applicant indicates that the offence was committed within the jurisdiction of district Saharanpur (U.P.) which by virtue of the government order dated 26.12.2001 falls within the jurisdiction of Special Judge, CBI Ghaziabad. By notification of the Allahabad High Court dated 28.1.2001 new court of Special Judge, CBI at Ghaziabad was created pursuant to the aforementioned government notification and above case now falls within the jurisdiction of Special Judge, CBI Ghaziabad and Special Judge CBI /Anti-corruption Dehradun now has no jurisdiction to proceed with the trial.

There were similar matters before Special Judge (CBI-anti-corruption) Dehradun and the transfer petitions were filed before the Supreme Court.

The same were disposed of by order-dated 8.05.2002. In view of the changed circumstances the case initiated by CBI against various persons were directed to be transferred to the court of Special Judge (CBI-anti-corruption) having jurisdiction in the matter and similar steps also need to be taken in the instant case.

This apart, the provisions of section 91 of U.P. Reorganization Act, 2000, envisages that the proceedings pending before the appointed day in a court, tribunal, authority or officer in any area which on that day falls within the State shall stand transferred to the corresponding court, tribunal, authority or officer of that State. The provisions of said section 91 are similar to the provisions of section 89 of the Bihar Reorganization Act, 2000. The later provisions came into consideration before the Apex Court in the case of **C.B.I. A.H.D. Patna Vs. Braj Bhushan Prasad & Ors, VII (2001) SLT 87** and on account of the fact that the occurrence took place in the part of State which now falls in Jharkhand State, the cases specified were directed to be transferred to the competent courts in Jharkhand State. The learned counsel for the petitioner contended that the law declared by the Supreme Court is the law of the land and binding on all throughout the country in view of Article 141 of the Constitution and on this analogy the instant case has to be transferred to a court of competent jurisdiction, which in this case is the Special Judge CBI Ghaziabad (U.P.). Having regard to the facts of the case the submission has force and has to be accepted.

Sri U.K.Uniyal has submitted that he has no objection if the case is transferred to the court at Ghaziabad.

The application is allowed. C.B.I. Case no.7 of 1992 CBI Versus K.C.Mathur and others pending before the Additional Sessions Judge/Special Judge (CBI-anti-corruption) Dehradun, Uttaranchal, is transferred to Special Judge CBI Ghaziabad. It is also provided that the evidence already recorded in the said case before the Additional Sessions Judge/Special Judge, Dehradun will be treated as evidence recorded by the appropriate court having jurisdiction and the Special Judge Ghaziabad need not call the witnesses already examined.

(Irshad Hussain, J.)

21.12.2002
BCB